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Message Text

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15
ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 SS-15 TRSE-00 H-03 EB-11 AID-20

IGA-02 NSC-10 CIAE-00 INR-10 NSAE-00 RSC-01 OMB-01

ABF-01 PM-07 DODE-00 COME-00 /095 R

DRAFTED BY L:L/NEA:ATBROWN
9/4/73: X29501
APPROVED BY S - MR. RUSH, ACTING
NEA - MR. LAINGEN S/S MR BARNES
TREASURY - MR. HINDLE
NEA/INS - MR. BORN
H - MR. SCHNEE
EB/IFD/OIA - MR. KENNEDY
L/T - MR. BEVANS
TREASURY - MR. HAPPEL
EB/IFD - MR. WEINTRAUB
---------- 028987
R 062238Z SEP 73
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI
INFO AMEMBASSY ISLAMABAD

C O N F I D E N T I A L STATE 177590

E.O. 11652: GDS
TAGS: EFIN, IN
SUBJ: INDIA SURPLUS PROPERTY ACCOUNT:
NEGOTIATING INSTRUCTIONS

REFS: (A) STATE 159404
(B) STATE 162934

1. YOU ARE AUTHORIZED TO OPEN NEGOTIATIONS WITH THE GOI TO REACH SETTLEMENT IN REGARD TO THE ACCOUNT OUTSTANDING UNDER THE MUTUAL AID SETTLEMENT AGREEMENT OF MAY 16, 1946 BETWEEN THE US AND INDIA (THE "AGREEMENT"). THIS NEGOTIATION SHOULD BE CONDUCTED IN CONNECTION WITH THE EXCESS
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RUPEES NEGOTIATIONS CURRENTLY IN PROGRESS.

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2. AS DESCRIBED IN GREATER DETAIL IN CIRCULAR 175 MEMO-
RANDUM PERTAINING TO THIS NEGOTIATION (COPY POUCHED TO
EMBASSY), THE AMOUNT NOW DUE AND UNPAID IS RS. 14,386,765
ACCORDING TO OUR CALCULATIONS AND, APPARENTLY, RS.

14,186,765 ACCORDING TO GOI CALCULATIONS. THIS DIFFERENCE
RESULTS FROM THE USE BY GOI OF "ACTUAL REALIZATIONS" ON
SALES EFFECTED AS OF JUNE 30, 1948 RATHER THAN, AS WE
CONSIDER APPROPRIATE, THE USE OF NET VALUE OF SALES AS OF
THAT DATE. THE TOTAL NET VALUE OF SALES AND THE TOTAL
ACTUAL REALIZATIONS AS OF JUNE 30, 1948, APPEAR ON PAGE 2
OF THE JULY 1, 1953 GOI NOTE NO. D.3612/53-AMS INCLUDED
IN THE PACKAGE OF DOCUMENTS POUCHED TO THE EMBASSY
AUGUST 23, 1973. IT IS OUR POSITION THAT THE DECISION
OF THE GOI TO DISPOSE OF SURPLUS PROPERTY UNDER THE
AGREEMENT ON A CREDIT BASIS OR UNDER OTHER TERMS NOT
RESULTING IN PAYMENT BY THE PURCHASER AT THE TIME OF SALE
SHOULD NOT AFFECT THE OBLIGATION OF THE GOI TO DELIVER
TO THE USG THE LATTER'S SHARE OF THE SALE PROCEEDS.

3. ACCORDING TO DEPT RECORDS, THE GOI HAS WITHHELD THE
APPROX. RS. 14 MILLION ON TWO GROUNDS:

A. PART OF THE PROCEEDS WERE WITHHELD PENDING
FINAL SETTLEMENT OF CLAIMS BROUGHT AGAINST THE GOI BY
CERTAIN PURCHASERS OF THE SURPLUS PROPERTY. OUR LAST
RECORD OF THIS LITIGATION INDICATES IT REMAINED UNSETTLED
AS OF 1963. THE GOI MAINTAINED IT COULD NOT SETTLE
ACCOUNTS UNDER THE AGREEMENT WHILE LARGE CLAIMS IN RESPECT
TO SALES OF SURPLUS PROPERTY REMAINED OUTSTANDING. THE
USG, ON THE OTHER HAND, HAS MAINTAINED (THUS FAR WITHOUT
SUCCESS) THAT THE TERMS AND MEANS OF DISPOSAL OF THE
SURPLUS PROPERTY WERE ENTIRELY AT THE DISCRETION OF THE
GOI AND THAT, THEREFORE, CLAIMS RESULTING FROM SUCH
DISPOSAL CANNOT LIMIT THE OBLIGATION OF THE GOI TO DELIVER
THE USG SHARE OF PROCEEDS ACCORDING TO THE TERMS OF
THE AGREEMENT.

B. THE GOI HAS ALSO WITHHELD AMOUNTS IN RESPECT TO
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SURPLUS PROPERTY CLAIMED TO HAVE BEEN LEFT IN PAKISTAN
AT THE TIME OF PARTITION. AGAIN, OUR POSITION HAS
BEEN THAT TITLE TO AND CONTROL OF THE SURPLUS PROPERTY
PASSED TO GOI AT THE TIME OF THE AGREEMENT, AND THAT,
THEREFORE, EVENTS OCCURING AFTER TITLE PASSED AND SALES
OCCURRED CANNOT LIMIT THE OBLIGATIONS OF INDIA UNDER
THE AGREEMENT. HOWEVER, IT IS NOT CLEAR FROM AVAILABLE
DEPT RECORDS WHETHER SURPLUS PROPERTY LEFT IN PAKISTAN

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HAD BEEN SOLD AT THE TIME OF PARTITION OR WHETHER, IF IT HAD, INDIA HAD RECEIVED PAYMENT ON SUCH SALES.

4. IT IS HOPED THAT FACTS CAN BE DEVELOPED IN THE COURSE OF YOUR DISCUSSIONS WITH THE GOI ON THIS SUBJECT. OUR REVIEW OF THE AGREEMENT AND AVAILABLE DEPT RECORDS SUGGESTS TWO GENERAL POINTS:

A. UPON EXECUTION OF THE AGREEMENT, INDIA RECEIVED TITLE TO LARGE AMOUNTS OF USG PROPERTY WITHOUT PAYMENT OF COMPENSATION TO THE US. ALTHOUGH OBLIGATED TO DISPOSE OF THIS PROPERTY AND THUS INCUR CERTAIN ADMINISTRATIVE AND SELLING EXPENSES, THE GOI WAS ENTITLED TO RETAIN FROM THE PROCEEDS OF SALES: (1) THE RUPEE EQUIVALENT OF 50 MILLION DOLS, (2) 50 PER CENT OF THE PROCEEDS OF ALL SALES ABOVE THAT AMOUNT, (3) 100 PER CENT OF THE PROCEEDS OF ALL SALES AFTER JUNE 30, 1948, AND (4) CUSTOMS DUTIES ON THE AMOUNT OF ALL SALES. IT WOULD APPEAR THAT THESE INCOME SOURCES SHOULD HAVE BEEN--AND INDEED WERE--MORE THAN SUFFICIENT TO COVER INDIA'S ADMINISTRATIVE AND SELLING EXPENSES INCURRED PURSUANT TO THE AGREEMENT.

B. THE BASIC CONCEPT OF PARA 7 OF THE AGREEMENT WAS THAT INDIA WOULD RECEIVE TITLE TO AND RESPONSIBILITY FOR ALL USG SURPLUS PROPERTY IN INDIA AS OF THE TIME OF THE AGREEMENT. THE GOI WOULD EXERCISE ITS BEST EFFORTS TO DISPOSE OF THE PROPERTY AS EXPEDITIOUSLY AS POSSIBLE AND WOULD MAKE A FINAL REPORT AS OF A DATE NO LATER THAN JUNE 30, 1948. THE US THEN WOULD BE ENTITLED TO A SPECIFIED SHARE OF THE PROCEEDS OF SALES DESCRIBED IN THE FINAL REPORT. THE POINT HERE WAS TO PERMIT DRAWING A LINE ON THE DISPOSAL PROCESS AND FINAL DETERMINATION OF AMOUNTS OWED. ONE RESULT OF THIS PROCEDURE WAS CONFIDENTIAL

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THAT THE USG HAD NO CLAIM FOR PAYMENTS IN RESPECT TO SALES AFTER THE DATE OF THE FINAL REPORT. AT ONE POINT WE ATTEMPTED TO REOPEN THAT ASPECT OF THE AGREEMENT, BUT THE GOI INSISTED UPON HOLDING TO ITS TERMS, THUS DENYING THE USG PROCEEDS IN RESPECT TO PROPERTY SOLD AFTER JUNE 30, 1948. IN THIS CONTEXT WE THINK IT FAIR TO HOLD INDIA STRICTLY ACCOUNTABLE FOR ALL PROCEEDS OF SALES INCLUDED IN THE FINAL REPORT.

5. IN VIEW OF THE FOREGOING, DEPT REQUESTS ANY RECOMMENDATION FOR A SETTLEMENT AT LESS THAN RS. 14,386,765 BE ACCOMPANIED BY AN EXPLANATION FOR THE COMPROMISE FIGURE, INCLUDING ANY NEW FACTS DEVELOPED IN THE DISCUSSIONS.

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6. ANY SETTLEMENT AMOUNT RESULTING FROM THIS NEGOTIATION WILL BE EXTREMELY SMALL COMPARED WITH THE AMOUNTS BEING DISCUSSED IN THE EXCESS RUPEE NEGOTIATIONS. WITH THAT IN MIND, IT IS SUGGESTED THAT YOU URGE THE GOI TO ACCEPT OUR ENTIRE CLAIM, BUT INDICATE WILLINGNESS TO DISCUSS INCLUSION OF THE SETTLEMENT AMOUNT WITHIN THE RUPEE ACCOUNT TO BE RETAINED BY THE US AS A RESULT OF THE EXCESS RUPEE NEGOTIATIONS. RUSH

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